CALIFORNIA DEPARTMENT OF AGING
Title 22, California Code of Regulations
Division 1.8 California Department of Aging

Initial Statement of Reasons

INTRODUCTION

The California Department of Aging (Department) is responsible for setting consistent statewide policy for the prudent use of Older Americans Act (OAA) program funds. Pursuant to federal law, the Department, in consultation with the area agencies on aging (AAAs), developed the Intrastate Funding Formula (IFF) to allocate federal and state funds to the AAAs for programs provided under Title III of the federal OAA. The IFF, identified in Section 9112 of the Welfare and Institutions Code, has been approved by the Administration on Aging (AoA), the federal funding agency. The Department uses the IFF to allocate funds for most Title III OAA programs and to allocate the Title VII OAA funds for Elder Abuse Prevention programs. In accordance with federal requirements, the Department uses the formula in Section 9719.5 of the Welfare and Institutions Code to allocate funds to the AAAs for the Ombudsman Program provided under Titles III B and VII of the OAA. These funds are allocated to the AAAs in an annual contract that terminates on June 30 of each fiscal year.

The objective of this proposal is to ensure that funds allocated to AAAs for OAA programs are spent in a timely and efficient manner for purposes intended by Congress and as required by federal law. This proposal will remove the incentive for AAAs to hold on to funds during a fiscal year to build up cash reserves to be used for purposes other than services in future fiscal years. Funds allocated to an AAA should correspond to local need as demonstrated in the AAA's area plan. Allowing an AAA to continually roll over unexpended funds is inconsistent with the intent of the OAA and contrary to good public policy. The only exception to this general rule is where the AoA has allotted funds for a new federal program enacted by Congress. In this circumstance, the proposed regulation authorizes the Department to re-allocate to an AAA funds that the AAA failed to spend or encumber in the previous fiscal year. The Department acknowledges that it takes between three and four years to identify the eligible population, assess community need, and build an adequate service delivery system to provide ongoing program services. The purpose of this limited exception is to enable an AAA to establish the program infrastructure necessary for successful implementation of the new program. The proposal restricts the use of the re-allocated funds to three limited purposes to ensure that the funds are not included as baseline funds in future fiscal years.

SPECIFIC PURPOSE OF EACH SECTION – GOVERNMENT CODE 11346.2(B)(1)

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

Proposed Section §7314(a)(1)

This amendment adds the Title III E federal program to the formula used by the Department to allocate administration funds to AAAs. This amendment is necessary to reflect the enactment of Title III E of the OAA by Congress in 2000. This amendment is necessary to demonstrate consistency in the allocation formula used by the Department to allocate other Title III funds to all AAAs. This amendment will remove any confusion over the Department's method of allocating Title III E administration funds to all AAAs.

Proposed Section §7314(a)(2)

This amendment adds the requirement for the Department to allocate funds in accordance with applicable federal law. This amendment is necessary to clarify that the Department will use the IFF as it has been interpreted or clarified by federal law, including case law.

Proposed Section §7314(a)(3)

This amendment specifies that the Department shall allocate Title III E federal funds in accordance with Section 9112 of the Welfare and Institutions Code. This amendment is necessary to establish, for the first time in regulation, the allocation method used by the Department to distribute these funds to AAAs. This amendment is necessary to reflect the enactment of Title III E of the OAA by Congress in 2000. This amendment is also necessary to demonstrate consistency in the allocation formula used by the Department to allocate other Title III funds to AAAs. This requirement will remove any confusion over the Department's method of allocating Title III E program funds to all AAAs.

In addition, this amendment adds the requirement for the Department to allocate funds in accordance with applicable federal law. This amendment is necessary to clarify that the Department will use the IFF as it has been interpreted or clarified by federal law, including case law.

Proposed Section §7314 (a)(4)

This amendment rewords the existing language and deletes the requirement to allocate Older Americans Act Title III F federal funds in accordance with Section 9112 of the Welfare and Institutions Code. This amendment is necessary to reflect the elimination of the Title III F program from the OAA of 1965, as amended in 2000.

In addition, this amendment adds the requirement for the Department to allocate funds in accordance with applicable federal law. This amendment is necessary to clarify that the Department will use the IFF as it has been interpreted or clarified by federal law, including case law.

Proposed Section §7314 (a)(5)

Title VII federal funds are used to fund Ombudsman and Elder Abuse Prevention programs. This amendment specifies that the Department will allocate Title VII federal funds allotted by the AoA for the Ombudsman program to AAAs in accordance with Section 9719.5 of the Welfare and Institutions Code. This amendment also specifies that Title VII funds for the Elder Abuse Prevention Program shall be allocated to AAAs in accordance with Section 9112 of the Welfare and Institutions Code. This amendment is necessary to establish, for the first time in regulation, the appropriate allocation method of Title VII federal funds, consistent with federal law, and also to reflect the enactment of Title VII of the OAA by Congress in 1992.

In addition, this amendment adds the requirement for the Department to allocate funds to AAAs in accordance with applicable federal law. This amendment is necessary to clarify that the Department will use the IFF as it has been interpreted or clarified by federal law, including case law.

Proposed Section §7314 (a)(6)

This amendment requires that Titles III and VII federal funds allocated to an AAA in a state fiscal year that are not expended or encumbered for services provided by June 30 of that fiscal year revert back to the Department at the end of the fiscal year. This amendment is necessary to ensure that funds allocated to AAAs for OAA services are spent in a timely and efficient manner for purposes intended by Congress and as required by federal law.

OAA funds are allocated to AAAs through an annual contract. The contract term extends from July 1 through June 30 of the state fiscal year. Many AAAs spend all of their baseline dollars to provide services as required by their contracts. However, some AAAs do not spend their entire allocation on services by the end of the fiscal year. Over the past several years, the Department has allowed each

AAA to retain the federal funds that it did not spend or encumber during the term of the fiscal year contract. This practice has resulted in unintended consequences. Some AAAs have consistently failed to spend their baseline funds on services year after year. As a result, they have been able to roll over large sums of money and build up substantial cash reserves to be used for another purpose in a future fiscal year. This practice is inconsistent with the intent of the OAA to provide direct services and is contrary to public policy because it provides an incentive for an AAA to hold on to funds during a fiscal year in order to build up cash reserves for future fiscal years for uses other than direct services to the intended population.

This amendment will clarify that the unexpended and unencumbered federal funds will revert back to the Department to be re-allocated to all AAAs in accordance with the formula for which the funds were originally allocated, for limited program purposes. This amendment is necessary to clarify which formula the Department will use to re-allocate these funds to all AAAs and to specify the restricted use of the funds.

This section also specifies that re-allocated funds cannot be used to increase an AAA's baseline allocation. This is to ensure that AAAs do not depend on this amount in establishing their annual budget estimates because the amount of funds available varies from year to year.

Proposed Section §7314 (a)(7)

This amendment expressly provides that federal funds recovered from an AAA as a result of a fiscal audit determination and resolution by the Department shall revert back to the Department to be re-allocated to all AAAs, in accordance with the formula for which the funds were originally allocated. This amendment is necessary to establish the method of allocating these federal funds to AAAs and to clarify that these funds can only be used for limited program purposes. It does not make sense to return all the recovered monies to an AAA that had failed to demonstrate appropriate use of the funds initially.

This section also specifies that re-allocated funds cannot be used to increase an AAA's baseline allocation. This amendment is necessary to ensure that AAAs do not depend on this amount in setting their annual budget estimates because the amount of funds available varies from year to year.

Proposed Section §7314 (a)(8)(A)

The AoA often provides supplemental funds to the Department as part of its federal reallotment process. Current regulations do not specify the method of allocation of these supplemental Title III and Title VII program funds. The proposed regulation will require these funds to be allocated to AAAs in accordance with Section 9112 or Section 9719.5 of the Welfare and Institutions Code. The

Department chose these formulas because they are the statutorily authorized formulas identified for allocating Title III and Title VII baseline funds.

This section also specifies that supplemental program funds that are re-allocated to an AAA cannot be used to increase an AAA's baseline allocation. This amendment is necessary to ensure that AAAs do not depend on these funds in setting their annual budget estimates because the amount of funds available varies from year to year.

Proposed Section §7314 (a)(8)(B)

This amendment provides that Supplemental Title III and Title VII program funds, not expended or encumbered for services provided by June 30 of the state fiscal year, shall revert back to the Department. These funds shall be re-allocated to all AAAs, in accordance with the formula used for the original allocation of the Title III or VII federal funds and their use shall be restricted to specified program purposes only. This amendment is necessary to establish the allocation method for funds which revert back to the Department at the end of the contract term. It is also necessary to clarify that these funds can only be used for limited purposes so they are not relied upon for services in future years. The regulation is also necessary to ensure that supplemental program funds are spent in a timely and efficient manner and to discourage AAAs from retaining funds during a fiscal year in order to build up cash reserves to be used for other purposes in future fiscal years.

This section also specifies that supplemental program funds re-allocated to an AAA cannot be used to increase an AAA's baseline allocation. This amendment is necessary to ensure that AAAs do not depend on this amount in setting their annual budget estimates because the amount of funds available varies from year to year.

Proposed Section §7314 (a)(8)(C)

This amendment provides that Supplemental Titles III B, C-1, C-2, and E administration funds allotted by the AoA to the Department as a result of the federal reallotment process shall be allocated to all AAAs in accordance with Section 9112 of the Welfare and Institutions Code. This amendment is necessary to establish the method the Department will use to allocate supplemental Title III federal funds received from the AoA. This requirement will remove any confusion over the Department's method of allocating these funds to AAAs.

This section also provides that all supplemental administration funds not expended or encumbered for services provided by June 30 of the state fiscal year revert back to the Department and be re-allocated by the Department to all AAAs, in accordance with Section 9112, Welfare and Institutions Code. This amendment is necessary to clarify that administration funds that are returned to the Department at the end of the fiscal year will lose their identity as administration funds at that time. These funds will be re-allocated to all AAAs according to the IFF for limited purposes only so they are not relied upon for ongoing services. This amendment will also ensure that supplemental administration funds are spent in a timely and efficient manner.

This section also specifies that re-allocated supplemental administration funds cannot be used to increase an AAA's baseline allocation. This amendment is necessary to ensure that AAAs do not depend on this amount in setting their annual budget estimates because the amount of funds available varies from year to year.

Proposed Section §7314 (a)(9)

Current regulations do not specify the allowable purposes for which AAAs can use unexpended or unencumbered Title III and VII baseline and supplemental funds, or funds recovered from an AAA as a result of a fiscal audit determination and resolution. The proposed regulation will formally adopt the Department's long-standing practice of restricting the use of these funds to the following specified purposes: 1) purchase of equipment which enhances the delivery of services to eligible service population; 2) home and community-based projects, which are approved in advance by the Department, and are designed to address the unmet needs of the eligible service population identified in the area plan, and 3) innovative pilot projects, which are approved in advance by the Department, and which are designed for the development or enhancement of a comprehensive and coordinated system of services. The Department chose to restrict the use of the re-allocated funds to these three purposes to ensure that AAAs use the funds in a manner consistent with the development of a community-based system of long term care services, while ensuring that funds are not being used to increase an AAA's baseline allocations.

Proposed Section §7314 (a)(10)

This amendment provides that Nutrition Services Incentive Program (NSIP) funds re-allocated pursuant to subdivisions (6), (7), and (8) of this section shall be used only to purchase food in the Elderly Nutrition Program. This amendment is necessary to ensure that NSIP funds are used for their specific purpose and not combined illegally with other funds. This program was formerly administered by the United States Food and Drug Administration.

Proposed Section §7314 (a)(11)

This amendment carves out an exemption to subdivisions (6), (7) and (8) of this section by allowing the Department the ability to re-allocate new OAA program funds to the same AAA that received the original allocation, for a period of four years without regard to the statutory formula. In other words, this exemption will allow an AAA to carry over unexpended and unencumbered funds into a subsequent fiscal year to be used for specified purposes for a limited period of time. The amendment is necessary to ensure that AAAs have sufficient resources to successfully implement the new program.

This amendment specifies that the period of exemption shall not exceed four years from the enactment of the new program. This amendment is necessary to ensure that the period for which funds are re-allocated to the AAA with the original allocation, does not continue in perpetuity.

This amendment restricts the use of the re-allocated funds to the three purposes specified in subsection (a)(9) of this section. The Department chose to restrict the use of the re-allocated funds to the three purposes to ensure consistency in the use of re-allocated funds.

This section also specifies that re-allocated funds for new programs cannot be used to increase an AAA's baseline allocation. This amendment is necessary to ensure that AAAs do not depend on this amount in setting their annual budget estimates because the amount of funds available varies from year to year.

Proposed Sections §7314 (b)(2); §7314 (b)(3),§7314 (b)(4) and §7314 (b)(5)

These amendments delete the outdated percentages used to restrict the transfer of program funds between Title III B and Title III C programs.   These changes are necessary to conform the regulation to federal law and to avoid the necessity of amending the regulation each time the percentages are changed by Congress.

This amendment also deletes the former §7314 (b)(4) and re-numbers the former §7314 (b)(5). This amendment is necessary because the requirement of the former §7314 (b)(4) is merged with the new §7314 (b)(2), thus eliminating the need for a separate section.

Proposed Sections §7314 (b)(4)(A)

This amendment describes in detail the type of justification which an AAA would need to present to the Department with its request to transfer funds from one program to another. Federal law allows exceptions to the limit on the percentages of approved transfers. These changes are necessary to conform the regulation to federal law and establish objective and consistent criteria for justifying a request to transfer funds from one program to another.